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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,897	01/06/2004	Bruce J. Holub	29717/04001	5082
24024	7590	01/09/2006	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,897	<b>Applicant(s)</b> HOLUB ET AL.	
	<b>Examiner</b> Helen F. Pratt	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

The use of the trademark Triton X-100 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

No trademarks should appear in the claims as in claims 18 and 35.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-12, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi (HP 61056102)

Takahashi (HP 61056102) discloses a method for preventing germination of seeds such as rice by treating the seeds with sugars, and maltitol (a sugar alcohol) and fatty acids. The active ingredient (fatty acid) is dissolved in water or a proper solvent to give a solution and then the seeds are immersed in the solution (abstract). Claims 1 and 4 differ from the reference in mixing the fatty acid and solvent with water and in the use of essential fatty acids. However, some of the listed fatty acids are seen to have

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been essential fatty acids (claim 2 also). Since the active ingredient, which is the fatty acid is mixed with a solvent or water, no patentable distinction is seen in mixing with a solvent and then water absent a showing of unexpected results. Therefore, it would have been obvious to mix an essential fatty acid in water or a solvent as shown by the reference.

Claims 5 and 6 further require that the solvent is organic and that it is ethanol. However, the reference to Takahashi discloses that the sugar alcohol and fatty acid can be dissolved in water or a proper solvent. Ethanol is a well known organic solvent as in claims 5 and 6. As ethanol as a solvent is well known, it would have been obvious to choose ethanol to make a mixture as claimed.

Claim 7 further requires mixing in a particular ratio, claim 8 in particular amounts and claim 9 for particular lengths of time and claim 10 soaking the seeds in particular amounts of the active mixture. However, as the process is the same, it is seen that the seeds would have also absorbed the fatty acids, and that it would have been within the skill of the ordinary worker to treat the seeds for particular lengths of time in particular concentrations depending on the degree of fortification required.

Claims 11 and 12 further require draining and washing the seed after soaking and claim 12 drying the seed after washing. However, nothing new is seen in known process steps as draining and washing are generally required to remove any solvent from a material and to keep a product from further deterioration. Therefore, it would have been obvious to drain and wash and then to dry in order to obtain a product that would not mold or deteriorate further.

Claims 20-22 further require treating plant matter with the process of claim 1. As it is known to treat plant matter as shown by rice, it would have been obvious to adsorb essential fatty acids (EFA) onto other plant material since the process basically only involves applying the active material to the plant.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above reference as applied to the above claims, and further in view of Bruzzese.

Claim 3 further requires particular fatty acids. Bruzzese (EP 0699 437) discloses that it is known to make pharmaceutical preparations of omega 3 fatty acids (abstract). As it is known that these acids are nutritious, it would have been obvious to substitute nutritious fatty acids in place of known fatty acids in order to improve the nutritive characteristics of the composition.

Claims 13, 14, 15, 28 and 46-48 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above reference as applied to claims 1-12 above, and further in view of Barker (CA 2,452,997).

Barker discloses a process for sprouting flaxseed in which flaxseeds are sprouted using controlled moisture with water. Also fenugreek, and other seeds can be sprouted (abstract). Claim 13 does not exclude sprouting the seeds and claim 14 requires germinating the seed (sprouting). Certainly, if it is beneficial to grind sprouts, then it would also have been beneficial to grind the seeds for ease of eating. Therefore, it would have been obvious to grind the seeds in the composition of the combined references.

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Claim 14 further requires germinating the seed prior to drying. Nothing new is seen in this, as the seed would not germinate after drying. Therefore, it would have been obvious to germinate the seed before drying.

Claim 15 further requires germinating the seeds for from 12 to 72 hours. Anyone familiar with germinating seed such as bean sprouts knows that this is a normal time for sprouting seeds. Therefore, it would have been obvious to sprout seeds for within the claimed times.

Claims 28 and 46 further require that the product is powdered. Baker discloses that sprouted seeds can be eaten dried and that the seeds have been ground (abstract). It would have been obvious to grind to a powder, depending on the use of the composition.

Claims 47-48 are to using particular amounts of the powdered seen in a food product. However, as seeds and nuts are well known for use in foods, it would have been obvious to use them in particular amounts in a food.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-12 above, and further in view of Toshihiko.

Claim 16 further requires that the solvent is an emulsifier, claim 17 that the emulsifier is added and claim 18 that the emulsifier is a particular emulsifier like lecithin. Toshihiko discloses that it is known to add lecithin to rice as a liquid dissolved in a solvent, which is added to rice or a mixture of rice and water (abstract). Lecithin is also used as an emulsifier and the reference discloses it as a surfactant, which is the same

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as an emulsifier, i. e. a surface-active agent. Therefore, it would have been obvious to use a known emulsifier in the process of the combined references.

The limitations of claim 19 have been disclosed above and are obvious for those reasons.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over above combined references as applied to the above claims and further in view of Ramos et al.

Ramos et al. disclose an instant rice, which is coated with a layer of oil (abstract). Claim 23 differs from the reference in whether the oil contains essential fatty acids. Oils in general are known to contain essential fatty acids. Therefore, it would have been obvious to coat a seed such as rice with EFA's.

The further limitations as to claims 24-27, 29-45, 49 and 50 have been disclosed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.


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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 1-5-06

  
**HELEN PRATT**  
**PRIMARY EXAMINER**